

REMARKS/ARGUMENTS

Claims 1, 5, 8, 11-22 and 36 are under examination in the application. The Office Action mailed on June 22, 2009 includes the following objections and rejections:

1. Claims 1, 5, 8, 11-22 and 36 are rejected under 35 U.S.C. § 103(a).

Claims 1, 5, 8, 11-22 and 36 are rejected under 35 U.S.C. § 103(a).

The Office Action also rejects claims 1, 5, 8, 11-22 and 36 as unpatentable under 35 U.S.C. § 103(a) over Fleischner in U.S. Patent No. 6,291,533 in view of Brand, et al., (Brand) in An Outstanding Food Source of Vitamin C, The Lancet, Vol. 320, Issue 833, p. 873, and further in view of Cho, et al, (Cho) in U.S. Patent Publication No. US 2002/0192314. Applicants respectfully submit that claims 1, 5, 8, 11-22 and 36 meet the standard of 35 U.S.C. § 103(a).

In KSR International Co. v. Teleflex Inc. (KSR), 550 U.S. ___, 82 USPQ2d 1385 (2007), the Supreme Court reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious *when it does no more than yield predictable results.*" (emphasis added) Id. at ___, 82 USPQ2d at 1395.

However, the critical question for a finding of obviousness is whether the results would be predictable. The Office has not met this burden because noting in the art cited (Fleischner, Brand and Cho) teaches that the combination would achieve the synergy demonstrated in the present application. Therefore, the prima facie case of obviousness fails because the present invention yielded *unpredictable* results. While the components may be known to have certain activities, the surprising and unexpected results obtained by the combination of the present invention is the quintessential type of finding that overcomes any *prima facie* case of obviousness, that is, a finding of synergy that was not expected from the teachings of the art.

Accordingly, claims 1, 5, 8, 11-22 and 36 are rendered obvious by Fleischner, Brand and Cho, or any combination thereof. Applicants respectfully request the Examiner withdraw the rejection under 35 U.S.C. § 103(a).

CONCLUSION

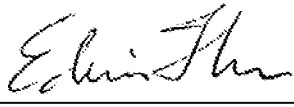
In light of the foregoing, Applicants submit that claims 1, 5, 8, 11-22 and 36 are in condition for allowance, and an early Notice of Allowance of all pending claims is respectfully solicited.

This paper is being filed with all required fees; however, if any additional fees are necessary the Commissioner is hereby authorized to charge any fees, including those for an extension of time, to Chalker Flores, LLP's Deposit Account No. 50-4863.

If the Examiner has any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

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Respectfully submitted,
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